

Introduced by Senator Wieckowski

February 27, 2015

An act to add Section 1788.61 to the Civil Code, relating to debt buying.

LEGISLATIVE COUNSEL'S DIGEST

SB 641, as introduced, Wieckowski. Debt buying: default judgment.

(1) Existing law, the Fair Debt Buying Practices Act, regulates the practice of buying charged-off consumer debt, as defined, sold or resold on or after January 1, 2014, for collection purposes and prescribes the circumstances pursuant to which the debt buyer may bring suit. The act prohibits a court from entering a default or other judgment in an action initiated by a debt buyer against a debtor unless business records, authenticated through a sworn declaration, are submitted by the debt buyer to the court to establish the facts required to be alleged, as specified.

This bill would permit a debtor to serve and file a notice of motion and motion to set aside a default or default judgment and for leave to defend an action relating to debt, if service of a summons did not result in actual notice to the debtor in time to defend an action brought by a 3rd party debt buyer and a default or default judgment has been entered against the debtor in the action. The bill would require a debtor to make this service and filing within 180 days of the first actual notice of the action. The bill would prescribe requirements for the filing, which would include an affidavit submitted to the court under oath and that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. By expanding the crime of perjury, the bill would impose a state-mandated local program. The bill would permit a court to set aside the default or default judgment

on whatever terms as may be just and allow the party to defend the action. The bill would state that its provisions apply to all consumer debt, regardless of the date it was sold.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1788.61 is added to the Civil Code, to
2 read:

3 1788.61. (a) Notwithstanding Section 473.5 of Code of Civil
4 Procedure, if service of a summons has not resulted in actual notice
5 to a debtor in time to defend an action brought by a third party
6 debt buyer and a default or default judgment has been entered
7 against the debtor in the action, the debtor may serve and file a
8 notice of motion and motion to set aside the default or default
9 judgment and for leave to defend the action within 180 days of the
10 first actual notice of the action.

11 (b) A notice of motion to set aside a default or default judgment
12 and for leave to defend the action shall designate as the time for
13 making the motion a date prescribed by Section 1005 of the Code
14 of Civil Procedure, and it shall be accompanied by an affidavit
15 showing under oath that the party's lack of actual notice in time
16 to defend the action was not caused by his or her avoidance of
17 service or inexcusable neglect. The party shall serve and file with
18 the notice a copy of the answer, motion, or other pleading proposed
19 to be filed in the action.

20 (c) Upon a finding by the court that the motion was made within
21 the period permitted by subdivision (a) and that debtor's lack of
22 actual notice in time to defend the action was not caused by his or
23 her avoidance of service or inexcusable neglect, the court may set
24 aside the default or default judgment on whatever terms as may
25 be just and allow the party to defend the action.

1 (d) This section shall not be limited by the time period specified
2 in Section 1788.50 and shall be applied to debt buyers with respect
3 to all consumer debt, regardless of the date it was sold.

4 SEC. 2. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.